



NEWS RELEASE

Wisconsin Department of Natural Resources

101 S Webster, P.O. Box 7921, Madison, WI 53707

Phone: (608) 266-6790 TDD: (608) 267-6897

dnr.wi.gov www.wisconsin.gov

DATE: Released in the June 28, 2005 DNR News

CONTACT: Toni Herkert (608) 266-0161; Todd Ambs (608) 264-6278

SUBJECT: Proposed shoreland rules increase flexibility for non-conforming structures

Public hearings to be held on proposed rules in July and August

MADISON, Wis. -- Waterfront property owners -- especially those with homes built before 1970 -- would gain more flexibility in maintaining and upgrading structures on their property under proposed rule changes that are also intended to better protect water quality, fish and wildlife habitat, and natural scenic beauty. The proposed changes will be the topic of public hearings statewide in July and August.

A citizen advisory committee has been working for more than two years to revise and update Wisconsin's shoreland management rules, which set statewide minimum standards for lot sizes, how far structures need to be from the water, and limits on cutting trees and vegetation. A 1997 Department of Natural Resources study showed the minimum standards, found in Natural Resources Chapter 115 of the Wis. Administrative Code, were inadequate to provide the natural buffer and low density needed to protect water quality, habitat and scenic beauty, as required by a 1966 law.

The proposed changes represent the sixth draft developed by DNR staff in response to feedback from the advisory committee, eight public listening sessions around the state, and thousands of public comments to various versions of the draft.

Bill Pielsticker, an advisory committee member and Trout Unlimited Wisconsin official, said the proposed changes offer more flexibility and predictability for landowners in exchange for partial or complete restoration of a shoreland buffer zone, which extends about the first 35 feet from the water's edge. "Such restoration is critical for maintaining or improving water quality and fish and animal habitat along the water's edge, and it will both protect the public's interest in our lakes and streams, and the property values that go hand in hand with clean water and healthy habitats," he said.

Under the proposal, requirements would stay the same for minimum lot sizes for single family homes and for buildings to be "set back" 75 feet from the ordinary high water mark, according to Toni Herkert, the shoreland management staffer leading the revision effort. But the proposal offers alternatives to the "50 percent rule" that now limits the alterations, additions or major repairs done on structures built before the current setback standards were established and closer to the water than 75 feet, a so-called "nonconforming structure."

(more)

Under the proposed revisions people would be able to make unlimited repairs and maintain structures that are built on foundations that do not extend below the ordinary high water mark or extend over navigable waters within the setback area. Within 35 feet property owners would be able to tear down and rebuild a structure in the same footprint if certain criteria are met. In some instances, beyond 35 feet, property owners would be able to tear down and expand their structure.

When owners of nonconforming structures start a building project that requires a building permit or some other county permit, they would be required to take actions to mitigate the potential impacts of their project on the primary buffer, the portion of their property right next to the water. The primary buffer is the most critical area for providing habitat and clean water.

Such mitigation actions would include restoring native vegetation within the 35-foot primary buffer and developing an erosion control plan. Mitigation may also include getting a septic system inspected and upgraded if necessary, controlling for the impact of the hard or "impervious" surfaces on their property that contributes to runoff and the removal of accessory structures within the 35 foot primary buffer that don't have an exemption, Herkert said.

Pielsticker said the net result of the proposed changes "provides landowners more flexibility and predictability while its mitigation requirements promise to maintain or improve water quality, something the existing rule has failed to accomplish."

Matt Stohr, another advisory committee member and legislative associate for the Wisconsin Counties Association, strongly encouraged county officials, who play an integral role in enforcing these important regulations, to attend the public hearings.

"The public hearings will serve as another opportunity for local government officials, shoreland property owners and interested parties to determine if the most recent draft of the rule is a step in the right direction when it comes to enforceability and protecting shoreland property owners and Wisconsin's precious waters," he said.

Public hearings are set for the following dates and locations. All sessions begin at 4:30 p.m. with a brief presentation and question and answer session followed by a 6 p.m. public hearing where testimony will be taken for public comments.

- July 12 – Eau Claire, Chippewa Valley Technical College, 620 Clairemont Ave.
- July 13 – Ashland, Wisconsin Indianhead Technical College, 2100 Beaser Ave.
- July 14 – Egg Harbor, Landmark Resort Egg Harbor Room, 7643 Hillside Road.
- July 19 – La Crosse, Western Wis. Technical College, 304 6th St. North.
- July 21 – Stevens Point, Sentry World Theater, 1800 North Point Dr.
- July 26 – West Bend, UW Washington County, 400 University Dr.
- July 27 – Grand Chute, 1900 Grand Chute Blvd.
- July 28 – Rhinelander, Holiday Inn Express, Pelican/Shepard Rooms, 668 West Kept St.
- Aug. 2 – Delavan, Lake Lawn Resort, 2400 East Geneva St.
- Aug. 4 – Fitchburg, Fitchburg Community Center Oak Hall Room, 5520 Lacy Rd.

To view the draft proposal, and all of the other materials that the advisory committee and DNR have reviewed and developed since starting the revision process in fall 2002, go to the DNR Web site: <<http://dnr.wi.gov>>, and use the drop down topic menu and select "shoreland management."

Proposed shoreland rules clarify setbacks for property with wetlands or bogs

MADISON -- Proposed changes in Wisconsin's shoreland protection rule would clarify setbacks for waterfront property owners who have a wetland or bog between their upland and open water, and could allow homes to be closer to open water than currently allowed. The provision is part of draft rules that are the topic of public hearings statewide in July and August.

Under the proposed changes, if a wetland extends more than 40 feet between open water and the upland boundary of the wetland, the county may allow structures to be set back 35 feet from the upland portion of the wetland. As a result such homes could be set back a total of 75 feet from open water considerably closer to the water than under the current standard.

Current rules require the homes to be set back 75 feet or more from the ordinary high water mark. The ordinary high water mark, or OHWM, is where the regular action of water against the bank leaves a distinct mark, and it establishes the boundary between publicly owned lakebed and privately owned land.

The OHWM is not always at or even near the water's edge, according to Russ Rasmussen, who leads the DNR watershed management program. This is often the case if a property has a wetland or bog between the upland and open water. As a result, it's often difficult to determine the ordinary high water mark, property owners may receive conflicting assessments of where the mark is from county officials and DNR staff.

"There have been disputes as to where the Ordinary High Water Mark actually is," Rasmussen says. "We are proposing to take some of the confusion out of the process and we want to see what the public has to think of this proposal."

Rasmussen says the point of the proposal is to establish a simpler process for waterfront property owners to understand where they can build homes on shoreland lots bordered by a wetland or bog. One simplification is that the proposal spells out which assessment of the Ordinary High Water Mark -- a county's or the DNR's -- is accepted in situations in which the assessments differ by at least 1 foot.

At the same time, he says, the setback provision concerning properties with a wetland between the upland and open water are consistent with what the revised rule is trying to achieve on all other waterfront properties. That overarching goal is to protect the first 35 feet of land next to the water. That land, known as the primary buffer, is the most critical shoreland area for providing habitat for fish and wildlife, filtering polluted runoff to protect water quality, and providing natural scenic beauty. So the rules seek to keep it in as natural state as possible, and limit structures within it.

Rasmussen says the number of waterfront property owners who could benefit from the proposed provision would increase in coming years because buildable waterfront lots are increasingly scarce. As a result, people are buying lots they once shunned because their soils, slopes, and other features made building on them more difficult and costly.

"As development proceeds along lakes, these types of sites are now the only ones that remain," he says.

People who plan to build a house or an addition need to know the ordinary high water mark to meet county ordinances for building setbacks, and the same is true when people are applying to DNR for a permit to grade or make other changes to their shoreline.

This new provision concerning setback distances for waterfront properties with wetlands is part of the shoreland protection rule package that is the topic of statewide public hearings in July and August. FOR MORE INFORMATION CONTACT: Toni Herkert (608) 266-0161; Russ Rasmussen (608) 267-7651